

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 492 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VASU JETHANAND THAVANI

Appearance:

MR AJ DESAI, APP, for Appellant.

MR DK MODI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/09/98

ORAL JUDGEMENT

1. This appeal arises out of a judgment and order passed by learned Metropolitan Magistrate, Court No.8, Ahmedabad City, in Criminal Case No. 478 of 1987, on 10th April, 1991, acquitting the respondent of the offences punishable under Sections 7 and 16(1)(a) of the Prevention of Food Adulteration Act, with which he was charged.

2. The facts of the case are that, the Food Inspector-Manilal Hargovandas Patel of Ahmedabad collected a sample of milk from the respondent on 18th July, 1984, at about 10.45 hours, in presence of a Panch witness. The sample was sent to the Public Analyst for analysis. After the analysis, it was found that the sample did not conform to the standards prescribed therefor. As such, permission as envisaged under Section 20 of the Prevention of Food Adulteration Act was sought for and upon receiving the same, a complaint was lodged in the Court of learned Metropolitan Magistrate, Ahmedabad. Requirements of Section 13(2) were also met with. At the trial, the accused pleaded not guilty and faced the trial. Upon considering the evidence on record, the learned Metropolitan Magistrate came to a conclusion that the prosecution had failed to prove the charge against the accused and, therefore, acquitted the accused-respondent of the charges against him by the impugned judgment dated 16th April, 1991. Being aggrieved by the said judgment and order, the State has preferred this acquittal appeal.

3. Mr. A.J. Desai, learned Additional Public Prosecutor has assailed the judgment and order impugned in this appeal on various grounds. He stated that the learned Magistrate has committed an error in evaluating the evidence and, therefore, the judgment may be set aside. On the other hand, Mr. D.K. Modi, learned advocate appearing for respondent No.1-original accused has opposed this appeal. According to him, the learned Magistrate has considered all aspects of the prosecution case and having found lacuna in the prosecution case, has rightly come to the conclusion to acquit the accused and unless the appellant is able to show that an apparent error is committed by the learned trial Magistrate, which is palpably unsustainable, this Court may not interfere in an acquittal appeal. Mr. Modi has pressed into service an unreported decision of this High Court in the case of State of Gujarat v. Ramniklal J. Vora & Ors. (Criminal Appeal No.374 of 1987). He, therefore, urged that the appeal may be dismissed.

4. This Court is taken through the relevant portions of the evidence on record.

5. Having considered the evidence on record closely and having considered the impugned judgment and order, it appears that the learned Magistrate cannot be said to have committed any error in evaluating the evidence. There are contradictory versions coming as to the taking of sample and sealing thereof, which may have a direct

bearing on the result of the analysis made by the Public Analyst. There is discrepancy about the quantity of preservative formalin added to the sample and, therefore, it may have a direct impact on the result of the analysis. It also transpires that the sample, which was sent to the Public Analyst, appears to have been collected from one Pavani whereas the name of the accused-respondent is Vasu Jethanand Thavani. It could be an error in reading the name if it is written in Gujarati, but then, it adds to the weakness of the prosecution case.

6. Apart from the other lacunas noticed by the learned Magistrate, it is found that the report of the Public Analyst produced on record at Ex.14 indicates that the sample was received by the office of the Public Analyst on 19th July, 1984, the same was examined on 21st July, 1984 and the report was sent on 2nd August, 1984. As such, the sample was not examined on the day on which it was received and the report was not signed on the day on which the sample was examined. Following the decision of this High Court in Criminal Appeal No.374 of 1987, a sufficient doubt can be said to have been raised by the defence in the prosecution version and the benefit thereof must reach the accused, as has happened in the instant case, may be for different reasons. The possibility of the sample and the report getting mixed up cannot be ruled out in absence of deposition of the person, who analysed the sample or the analyst, who caused the sample to be examined, and that being so, this cannot be considered as a case wherein this Court should interfere with the verdict of the learned trial Magistrate recording acquittal of the accused, as it cannot be said that the verdict of the learned trial Magistrate suffers from any apparent mistake of fact or law. It cannot be said either that the view taken by the learned trial Magistrate is not possible at all and that no other conclusion but guilt of the accused could have been arrived at, considering the evidence on record. The appeal, therefore, must fail and is, therefore, dismissed.

[A.L. DAVE, J.]